REMARKS

1. The Declaration of Else Tønnesen was filed under 37 CFR 1.132, as is evident from the fact that it makes not statements regarding the date of invention.

2. The "written description" rejection of claims 37 and 38 is moot as those claims have been cancelled. This also moots the objection to the improper Markush group of claim 38.

3. The objection to claims 28 and 36 as having the same scope is moot as claim 36 has been cancelled.

4. Claims 1, 2, 5, 23 and 39 stand rejected as anticipated by Akamatsu. In the last paragraph on page 3, the Examiner states:

> Applicant's arguments have been fully considered but are not deemed persuasive. The instant claims do not state **"a method for the treatment or prophylaxis of acute inflammation of the lung or airway"** (Emphasis added). The instant claims are broadly drawn to "a method for the treatment or prophylaxis of a nonischemic condition, **characterized by acute inflammation of the lung or airway"** (Emphasis added).

As a result of the present amendment, claim 1 now is drawn to "a method for the treatment or prophylaxis of acute inflammation of the lung or airway". In contrast, Akamatsu discloses alleviation of anemia. We believe that the amendment of claim 1 is following an examiner's suggestion of patentable subject matter.

4. Claims 1, 26-30, 36, 40-42, 46 and 50 stand rejected as obvious over Akamatsu in view of Delgado Hernandez. The amendment to claim 1 should affect this rejection, as well as the one for anticipation.

Akamatsu *et al.* describes the treatment of anemia, which cannot be considered as a condition characterized by acute

inflammation of the lung and airways.

Hernandez Delgado et al. shows that alpha-MSH may have an effect on myeloperoxidase in LPS-induced lung inflammation, which suggests that alpha-MSH treatment may have an effect that could be associated with inhibition of neutrophils. However, the paper provides no data supporting that EPO could have anti-inflammatory effects in inflammatory lung disease.

None of the prior art documents disclose or suggest that EPO in combination with alpha-MSH treats or prevents acute inflammation of the lung or airways. Therefore, there is no incentive for the person skilled in the art to combine Akamatsu *el al.* with Hernandez *et al.*

5. The objection to claims 20, 25, 35, 44, 45, 47-49 as dependent on a rejected claim should be moot in view of the amendments to base claim 1, which overcome the rejections.

6. Since claim 1 no longer refers to a "condition", claims 20, 23 and 25 have been reworded.

7. Claims 41 and 42 have been amended so that they parallel claims 28 and 30, and are properly limited by dependent claims 47-49.

8. New claims 51 and 52 parallel claim 45, but depend from 28 and 41 respectively.

9. New claims 53-56 recite conditions that the individual is suffering from, with basis as follows:

53: allergic rhinitis
P5, L10 and P12, L9-10

54: common cold
P5, L9

55: airway infection
P5, L9

56: side effects of drug or poisoning
P5, L34-35

These new claims parallel prior claims 20, 23, and 25.

10. Unelected claims have been cancelled.

Respectfully submitted,

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